

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TRI-CORP HOUSING, INC.,

Plaintiff,

Case No. 12-CV-216-CNC

vs.

ROBERT BAUMAN

Defendant.

**AFFIDAVIT OF JOHN E. MACHULAK IN OPPOSITION
TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

JOHN E. MACHULAK, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys for the plaintiff, Tri-Corp Housing, Inc. (“Tri-Corp”, and I am submitting this affidavit in opposition to the motion for summary judgment made by the defendant, Robert Bauman.

2. The Court should have before it in the record the following affidavits which were referenced in Tri-Corp’s opposition to Mr. Bauman’s motion for summary judgment when the matter was heard in Circuit Court and which were reviewed by the State of Wisconsin Court of Appeals:

Affidavit of Michael S. Brever, dated April 13, 2009;

Affidavit of Michael S. Brever (In Response to WHEDA’s Motion for Summary Judgment), dated May 11, 2009;

Affidavit of John E. Machulak (In Response to WHEDA's Motion for Summary Judgment), dated May 11, 2009;

Original Affidavit of Michael S. Brever (per request of R. Jeffrey Krill), dated March 20, 2009, and filed May 11, 2009;

Affidavit of Michael S. Brever (In Response to Third-Party Defendant Robert Bauman's Motion for Summary Judgment), dated September 23, 2009; and

Affidavit of John E. Machulak, dated January 25, 2010.

For the Court's convenience, some of the exhibits to these affidavits are being attached and resubmitted with this affidavit, as indicated below. While a number of exhibits are referenced in the Affidavit of Michael S. Brever submitted with this response, they are attached to this affidavit in an effort to keep things organized.

3. Attached to this affidavit as Exhibit "A" is a copy of a transcript of the hearings before the Board of Zoning Appeals of the City of Milwaukee on September 6, 2007.

4. Attached to this affidavit as Exhibit "B" is a copy of a letter dated May 17, 2005, authored by James M. Hill, which is part of the record before the Board of Zoning Appeals of the City of Milwaukee.

5. Attached to this affidavit as Exhibit "C" is a copy of an email authored by James M. Hill and sent to Antonio Riley of WHEDA dated November 5, 2007, which was part of the record before the Milwaukee County Circuit Court.

6. Attached to this affidavit as Exhibit "D" is a copy of an email dated November 7, 2007, authored by James M. Hill and sent to Kate Venne of WHEDA, which was produced as part of a document production in the Circuit Court action prior to the notice of removal.

7. Attached to this affidavit as Exhibit “E” are copies of pages from the transcript of the depositions of Robert Bauman taken on December 8, 2008, and January 15, 2009. which was part of the record before the Milwaukee County Circuit Court.

8. Attached to this affidavit as Exhibit “F” are copies of pages from the transcript of the deposition of James Mathy taken on March 13, 2009, which was part of the record before the Milwaukee County Circuit Court.

9. Attached to this affidavit as Exhibits “G”, “H”, and “I are copies of the police reports which were filed with the Milwaukee County Circuit Court in David Rutledge vs. Southeast Affordable Housing Corporation, et al., Case No. 07-CV-007485, which were part of the record before the Milwaukee County Circuit Court.

10. Attached to this affidavit as Exhibit “J” is a copy of an order of the Board of Zoning Appeals for the City of Milwaukee dated November 4, 1977, reflecting the grant of the Special Use Exception for West Samaria along with a plan of operation referenced in the order, which is part of the record before the Board of Zoning Appeals of the City of Milwaukee.

11. Attached to this affidavit as Exhibit “K” is a copy of a letter from Robert Theine Pledl dated May 19, 2005, to which is attached a “Request for Reasonable Accommodation - West Samaria” which was submitted to BOZA on that day, and which is part of the record before the Board of Zoning Appeals of the City of Milwaukee.

12. Attached to this affidavit as Exhibit “L” is a copy of an email to and from Robert Bauman dated June 9, 2005, which was marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

13. Attached to this affidavit as Exhibit “M” is a copy of a letter dated April 7, 2006, from Delbert F. Reynolds, director of the Milwaukee Field Office of the United States Department of Housing and Urban Development to Mayor Thomas M. Barrett, which was part of the record before the Milwaukee County Circuit Court.

14. Attached to this affidavit as Exhibit “N” is a copy of a JSOnline article dated May 18, 2006, which was marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

15. Attached to this affidavit as Exhibit “O” is a copy of a transcript of the hearings before the Board of Zoning Appeals of the City of Milwaukee on June 6, 2006, and which is part of the record before the Board of Zoning Appeals of the City of Milwaukee.

16. Attached to this affidavit as Exhibit “P” is a copy of the June 20, 2006 decision entered by the Board of Zoning Appeals for the City of Milwaukee, summarizing the results of the June 6, 2006, hearing, and which is part of the record before the Board of Zoning Appeals of the City of Milwaukee.

17. Attached to this affidavit as Exhibit “Q” is copy of an email authored by Robert Bauman dated March 1, 2007, which was marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

18. Attached to this affidavit as Exhibit “R” is a copy of an email authored by Robert Bauman dated March 2, 2007, which was marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

19. Attached to this affidavit as Exhibit “S” is a copy of a City of Milwaukee News Release dated March 23, 2007, which was marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

20. Attached to this affidavit as Exhibit “T” is a copy of a letter authored by Robert Bauman dated April 19, 2007, which was marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

21. Attached to this affidavit as Exhibit “U” is a copy of an email authored by James M. Hill dated April 20, 2007, and which was part of the record before the Milwaukee County Circuit Court.

22. Attached to this affidavit as Exhibit “V” are copies of notes authored by Robert Bauman dated August 8, 2007, which were marked as a deposition exhibit in this case, and which was part of the record before the Milwaukee County Circuit Court.

23. Attached to this affidavit as Exhibit “W” is a copy of the September 17, 2007, decision and order entered by the Board of Zoning Appeals for the City of Milwaukee, summarizing the results of the September 6, 2007, hearing, and which is part of the record before the Board of Zoning Appeals of the City of Milwaukee.

/s/ John E. Machulak

John E. Machulak

Subscribed and sworn to before me
this 15th day of April, 2013.

/s/ Elizabeth M. Krueger

Notary Public, Milwaukee County
State of Wisconsin

My Commission expires: 03/05/2017